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SCHEDULE 1

(introduced by section 1)

WATER INDUSTRY COMMISSION FOR SCOTLAND

Before schedule 1 (the Commissioner and Customer Panels) to the 2002 Act” there is inserted—

“SCHEDULE A1

(introduced by section 1(4))

WATER INDUSTRY COMMISSION FOR SCOTLAND

1 Status

- (1) The Commission is a body corporate.
- (2) The Commission—
 - (a) is not a servant or agent of the Crown,
 - (b) has no status, immunity or privilege of the Crown,and its property is not to be regarded as property of, or held on behalf of, the Crown.

2 Membership

The Commission is to consist of the following members—

- (a) not fewer than 3, nor more than 5, ordinary members, and
- (b) the person holding the post of chief executive.

3 Tenure and removal from office

- (1) Each ordinary member—
 - (a) is to be appointed by the Scottish Ministers for such period as is specified in the appointment,
 - (b) may, by written notice to the Scottish Ministers, resign as a member,
 - (c) in other respects, holds and vacates office on such terms and conditions as the Scottish Ministers may determine, and
 - (d) after ceasing to hold office is eligible for reappointment as a member.
- (2) The Scottish Ministers may remove an ordinary member from office and the Commission may, with the approval of the Scottish Ministers, remove the member who is the chief executive from office if satisfied that—
 - (a) the member’s estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or
 - (b) the member—
 - (i) is incapacitated by physical or mental illness,
 - (ii) has been absent from meetings of the Commission for a period longer than 3 consecutive months without the permission of the Commission, or
 - (iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

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4 Disqualification

A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is a member of—

- (a) the House of Lords,
- (b) the House of Commons,
- (c) the Scottish Parliament, or
- (d) the European Parliament.

5 Chairing

- (1) The Scottish Ministers—
 - (a) must appoint one of the ordinary members to chair meetings of the Commission, and
 - (b) may, after consulting that member, appoint another ordinary member to act as deputy to that member.
- (2) The member appointed to chair the meetings and any member appointed to act as deputy to that member hold and vacate office as such in accordance with the terms of their appointments.
- (3) A member so appointed may, by written notice to the Scottish Ministers, resign from office as such.
- (4) A member so appointed vacates office on ceasing to be a member of the Commission.
- (5) Where a member—
 - (a) is appointed to chair meetings or to act as deputy to the member so appointed, or
 - (b) ceases to hold office as such,the Scottish Ministers may vary the terms of the member's appointment so as to alter the date on which office as a member is to be vacated.

6 Remuneration, allowances and pensions

- (1) The Commission must pay to each ordinary member such remuneration as the Scottish Ministers may determine.
- (2) The Commission must pay to each ordinary member and the chief executive such allowances as the Scottish Ministers may determine in respect of expenses properly incurred in the performance of their duties as a member.
- (3) Where a person ceases to be an ordinary member otherwise than on the expiry of that person's term of appointment, the Scottish Ministers may, if they think there are special circumstances, direct the Commission to pay to the person such amount of compensation as they may determine.
- (4) The Scottish Ministers may direct the Commission to pay—
 - (a) such pension, allowance or gratuity to, or in respect of, any person who is or has been an ordinary member,
 - (b) such contribution or other payment towards provision for such pension, allowance or gratuity,as they consider appropriate.

7 Chief executive

- (1) The Commission is to employ a chief executive.
- (2) The Scottish Ministers are to appoint the first chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.
- (3) Before making the appointment of the first chief executive, the Scottish Ministers must consult the member of the Commission appointed, or to be appointed, to chair the meetings of the Commission (if there is a person holding, or as the case may be designated to hold, that office).
- (4) The Commission may, with the approval of the Scottish Ministers, make subsequent appointments to the post of chief executive on such terms and conditions as it may with the approval of the Scottish Ministers determine.
- (5) The chief executive is to be appointed from amongst persons who appear—
 - (a) as regards the first appointment, to the Scottish Ministers, and
 - (b) thereafter, to the Commission,to have knowledge, skills or experience relevant to the functions of the Commission.
- (6) The Commission may, with the approval of the Scottish Ministers—
 - (a) vary any terms and conditions of a person's appointment to the post of chief executive, or
 - (b) terminate a person's appointment to the post of chief executive if the Commission is satisfied that the person is not adequately discharging the functions of that post.

8 Staff

- (1) All staff employed, immediately before the coming into force of this sub-paragraph, by the Water Industry Commissioner for Scotland are transferred to the employment of the Commission.
- (2) The contract of employment of a person transferred by virtue of sub-paragraph (1)—
 - (a) is not terminated by the transfer, and
 - (b) has effect from the date of transfer as if originally made between the person and the Commission.
- (3) Without prejudice to sub-paragraph (2), where a person becomes a member of staff of the Commission under sub-paragraph (1)—
 - (a) all the rights, powers, duties and liabilities of the Water Industry Commissioner for Scotland under or in connection with that person's contract of employment are by virtue of this sub-paragraph transferred to the Commission on the date of transfer, and
 - (b) anything done before that date by or in relation to the Water Industry Commissioner for Scotland in respect of that contract of employment or that person is to be treated from that date as having been done by, or in relation to, the Commission.
- (4) Sub-paragraphs (1) to (3) do not prejudice the right of any person to terminate that person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have

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occurred by reason only that the identity of that person's employer changes by virtue of those sub-paragraphs.

- (5) The Commission may, with the consent of the Scottish Ministers as to numbers, terms and conditions, appoint such other employees as it considers appropriate.
- (6) The Commission must, as regards such of its employees as it may with the approval of the Scottish Ministers determine, make such arrangements as it considers appropriate for providing, to or in respect of those employees, pensions, allowances or gratuities.
- (7) Such arrangements—
 - (a) may include the establishment and administration, by the Commission or otherwise, of one or more pension schemes, and
 - (b) must, in any case, be approved by the Scottish Ministers.
- (8) The reference in sub-paragraph (6) to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

9 Transfer of property and liabilities

- (1) All property (including rights) and liabilities, subsisting immediately before the coming into force of this paragraph, of the Water Industry Commissioner for Scotland are transferred to the Commission.
- (2) Sub-paragraph (1) has effect in relation to any property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or prohibit the transfer of the property or liabilities.

10 Committees

- (1) The Commission may establish committees for or in connection with the exercise of such of its functions as it may determine.
- (2) Any committee established under this paragraph must be chaired by a person who is an ordinary member of the Commission.
- (3) Employees of the Commission who are not members of the Commission may be appointed to be members of any committee established by it.

11 Delegation of powers

- (1) Anything authorised or required under any enactment to be done by the Commission may be done by any of its committees which, or by any of its members or employees who, are authorised (whether generally or specifically) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Commission from doing anything that a committee, member or employee has been authorised or required to do.

12 Proceedings

- (1) The Commission may regulate its own procedure (including any quorum) and that of any of its committees.
- (2) The validity of any proceedings or actings of the Commission is not affected by—

- (a) any vacancy among its members, or
- (b) any defect in the appointment of a member.

13 General powers

- (1) The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, the exercise of its functions including, in particular—
 - (a) entering into contracts; and
 - (b) acquiring and disposing of property.
- (2) But the Commission may not acquire or dispose of land without the consent of the Scottish Ministers.

14 Accounts

The Commission must—

- (a) prepare for each financial year, in accordance with directions given by the Scottish Ministers, an account of the Commission's income and expenditure, and
- (b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.”.

SCHEDULE 2

(introduced by section 12)

LICENCES AND COMPLIANCE: FURTHER PROVISION

Application for licence

- 1 (1) An application for a water services licence or a sewerage services licence is to be made to the Commission and is—
 - (a) to be in such form and made in such manner; and
 - (b) to contain such information (including information in the form of a document),as the Scottish Ministers may by order prescribe.
- (2) The applicant must provide the Commission with such further information (including information in the form of a document) as it reasonably requires in order to determine the application.
- (3) Sub-paragraph (2) does not authorise the Commission to require the disclosure of anything that a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) The applicant must, in such manner and within such time from the making of the application as the Scottish Ministers may by order prescribe, publish a notice of the application; and the notice must—
 - (a) specify such procedure for making representations to the Commission with respect to the application; and
 - (b) contain such other particulars,as the Scottish Ministers may so prescribe.

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- (5) Where the Commission proposes to refuse an application, the Commission is to give the applicant notice—
 - (a) of that fact (together with its reasons for proposing to refuse the application); and
 - (b) specifying the date by which the applicant may make representations to the Commission with respect to the proposed refusal.
- (6) The Commission is, in determining the application, to have regard to any representations made by virtue of—
 - (a) sub-paragraph (4)(a); and
 - (b) sub-paragraph (5)(b).
- (7) Any applicant for a water services licence or a sewerage services licence who knowingly or recklessly makes a statement, in connection with the application for the licence, that is false or misleading in a material particular is guilty of an offence.
- (8) A person who is guilty of an offence under sub-paragraph (7) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.
- (9) A person whose application for a water services licence or sewerage services licence has been refused may, within 14 days of the date on which the refusal was intimated to the person under section 7(5)(a), appeal to the Court of Session against the refusal on a question of law.
- (10) Where a water services licence or sewerage services licence has been granted, Scottish Water may, within 14 days of the date on which a copy of the licence was sent to Scottish Water under section 7(6)(b), appeal to the Court of Session against the granting of the licence on a question of law; and the licence is suspended until the appeal is withdrawn or finally determined.
- (11) In an appeal under sub-paragraph (9) or (10), the Court may quash or confirm the Commission's decision to refuse the application or (as the case may be) grant the licence; and the decision of the Court in the appeal is final.

Conditions of licence

- 2 (1) Each water services licence and sewerage services licence—
 - (a) is, subject to sub-paragraph (10), to have incorporated in it by reference to the standard conditions such of those conditions as are applicable to it; and
 - (b) may include such ordinary conditions as appear to the Commission to be necessary or expedient for the purposes of or in connection with the activities authorised by the licence.
- (2) The Commission is, within 9 months of the coming into force of this sub-paragraph, to determine standard conditions that are to apply to water services licences and sewerage services licences.
- (3) The standard conditions are to relate to the obligations of water services providers and sewerage services providers to their customers and to Scottish Water; and the standard conditions may, in particular—
 - (a) include standard conditions that are to apply to—
 - (i) all licences; and

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- (ii) a particular type of licence; and
 - (b) make provision for—
 - (i) the standard conditions (or any of them) not to apply to a particular licence or type of licence in such circumstances; and
 - (ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances, as may be specified in the standard conditions.
- (4) The Commission is to—
 - (a) consult the Scottish Ministers on proposals for standard conditions; and
 - (b) publish the standard conditions.
- (5) The Commission—
 - (a) is from time to time to review the standard conditions; and
 - (b) may—
 - (i) modify the standard conditions; and
 - (ii) make such modification to the conditions of any licence as it considers is necessary or expedient as a consequence of any modification of the standard conditions.
- (6) Before making any modification under sub-paragraph (5)(b), the Commission is to—
 - (a) send a notice of the proposed modification to—
 - (i) every water services provider and sewerage services provider whose licence would be affected by the modification;
 - (ii) the Scottish Ministers; and
 - (iii) Scottish Water; and
 - (b) publish the notice.
- (7) The notice must—
 - (a) state the reasons why the modification is proposed; and
 - (b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposed modification may be made to the Commission.
- (8) The Commission is to have regard to any representations made by virtue of sub-paragraph (7)(b).
- (9) Where the Commission modifies the standard conditions, the Commission is to publish them as modified.
- (10) The Commission may, in granting a particular licence, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.
- (11) Sub-paragraphs (6) to (8) apply to exclusions and modifications under sub-paragraph (10) as they apply to modifications under sub-paragraph (5)(b) (but as if, in the case of an exclusion, the references in sub-paragraphs (6) and (7) to modification were references to exclusion).
- (12) Any ordinary condition of a licence may provide for the condition to—
 - (a) have effect or cease to have effect; or
 - (b) be modified,

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at such time, in such manner and in such circumstances, as the Commission considers appropriate.

- (13) The Commission may modify any condition of a particular licence if it considers that the modification is necessary or expedient in the circumstances of the case.
- (14) Sub-paragraphs (6) to (8) apply to modifications under sub-paragraph (13) as they apply to modifications under sub-paragraph (5)(b).
- (15) Any water services provider or sewerage services provider who is aggrieved by the inclusion of a condition in the licence held by the provider may, within 14 days of the date on which the licence was granted, appeal to the Court of Session against the inclusion of the condition on a question of law.
- (16) Any water services provider or sewerage services provider who is aggrieved by a modification of a condition included in the licence held by the provider may, within 14 days of the date on which the modification has effect, appeal to the Court of Session against the making of the modification on a question of law.
- (17) In an appeal under sub-paragraph (15) or (16), the Court may quash, confirm or vary the condition; and the decision of the Court in the appeal is final.

Conditions: sustainable development

- 3 (1) The Scottish Ministers may issue to the Commission guidance as to how water services and sewerage services providers might, by the manner in which they perform the activities authorised by their licences, reasonably contribute to the achievement of sustainable development.
- (2) In exercising its functions under paragraph 2, the Commission is to have regard to any guidance issued under sub-paragraph (1).

Transfer of licence

- 4 (1) Any water services licence or sewerage services licence may, subject to sub-paragraphs (2) to (5), be transferred to another person by the provider who holds it (“the transferor”), either in respect of—
 - (a) all the activities; or
 - (b) any particular activity or activities, authorised by the licence.
- (2) A transfer of a licence is not valid unless—
 - (a) the transfer complies with any condition of the licence as to transfer; and
 - (b) the Commission consents to the transfer.
- (3) The Commission may consent to a transfer only if satisfied that—
 - (a) in a case where the proposed transfer is in respect of all the activities authorised by the licence, the person to whom the transferor proposes to transfer the licence (“the transferee”) has the ability to perform adequately those activities; or
 - (b) in a case where the proposed transfer is in respect of any particular activity or activities authorised by the licence, the transferee has the ability to perform adequately that activity or (as the case may be) those activities.

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- (4) In assessing the transferee’s ability so to perform that activity or those activities, the Commission is to have special regard to—
 - (a) the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7; and
 - (b) any other matters specified under that subsection.
- (5) In relation to a transfer—
 - (a) an application for consent is to be made by the transferee; and
 - (b) sub-paragraphs (1) to (6) of paragraph 1 apply as regards an application for consent as they apply as regards an application for a licence.
- (6) Any applicant for consent to a transfer of a licence who knowingly or recklessly makes a statement, in connection with the application for consent, that is false or misleading in a material particular is guilty of an offence.
- (7) A person who is guilty of an offence under sub-paragraph (6) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.
- (8) The Commission may consent to a transfer subject to such—
 - (a) modification to any condition of the licence; and
 - (b) conditions apart from the conditions of the licence,as it considers it appropriate to make.
- (9) As soon as practicable after deciding whether to consent to a transfer, the Commission is to intimate its decision to—
 - (a) the transferor and the transferee; and
 - (b) Scottish Water.
- (10) Where the Commission withholds consent to the transfer, the transferee may, within 14 days of the date on which the decision to do so was intimated to the transferee under sub-paragraph (9)(a), appeal to the Court of Session against the decision on a question of law.
- (11) Where the Commission consents to the transfer, Scottish Water may, within 14 days of the date on which the decision to do so was intimated to Scottish Water under sub-paragraph (9)(b), appeal to the Court of Session against the decision on a question of law.
- (12) In an appeal under sub-paragraph (10) or (11), the Court may quash or confirm the Commission’s decision to withhold consent to the transfer or (as the case may be) to consent to the transfer; and the decision of the Court in the appeal is final.
- (13) In this paragraph, “transfer” includes any form of assignation.

Powers of entry etc.

- 5 (1) For the purposes of monitoring and ensuring compliance with the terms and conditions of licences under section 8(1), the powers mentioned in sub-paragraph (2) are exercisable by the Commission and any person authorised by the Commission for the purpose of the exercise of those powers.
- (2) The powers are—

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- (a) power to enter any premises—
 - (i) of any water services provider or sewerage services provider;
 - (ii) in respect of which such a provider has made arrangements for or in relation to the supply of water or the provision of sewerage or disposal of sewage;
 - (iii) of any other person,
 for the purpose of exercising a power mentioned in heads (b) and (c);
 - (b) power to carry out such inspection of any document or article found on the premises as the Commission considers necessary; and
 - (c) for the purpose of inspecting any such document or article, power to take the document away from the premises.
- (3) The power mentioned in head (a) of sub-paragraph (2) entitles the Commission (or a person authorised by the Commission) to demand, as of right, entry—
- (a) to premises referred to in sub-head (i) of that head, at any reasonable time (and without notice); and
 - (b) to premises referred to in sub-head (ii) or (iii) of that head, at any reasonable time provided that the Commission (or the person) gives 24 hours' notice of the exercise of the power to the occupier of the premises.
- (4) The powers mentioned in sub-paragraph (2) must not be exercised in relation to premises referred to in sub-head (iii) of head (a) of that sub-paragraph unless the Commission is satisfied that the exercise of those powers in relation to the premises referred to in sub-heads (i) and (ii) of that head would be insufficient for the purposes referred to in sub-paragraph (1).
- (5) The owner and occupier of any premises in respect of which a power mentioned in sub-paragraph (2) is being exercised, and any person on the premises when the power is being exercised, must—
- (a) give the person exercising the power such assistance; and
 - (b) provide that person with such information,
- as that person reasonably requires.

Powers of entry etc.: further provision

- 6 (1) A person entitled to enter premises by virtue of the power mentioned in paragraph 5(2)(a)—
- (a) may take on to the premises such other persons and such equipment as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and
 - (b) must, if required to do so, produce written evidence of that entitlement.
- (2) A person who enters premises in the exercise of the power mentioned in paragraph 5(2)(a) must leave the premises as effectually secured against trespassers as the person found them.
- (3) Where a person exercises the power mentioned in paragraph 5(2)(a), the Commission is to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise that power; or
 - (b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2),

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except in so far as the loss or damage is attributable to the fault of the person who sustained it.

- (4) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of any power conferred by paragraph 5(1) and (2) is guilty of an offence.
- (5) Any person who—
- (a) intentionally obstructs a person acting in the exercise of any power conferred by paragraph 5(1) and (2); or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under paragraph 5(5),
- is guilty of an offence.
- (6) A person who is guilty of an offence under sub-paragraph (4) or (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

Warrants

- 7 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in paragraph 5(2); and
 - (b) at least one of the conditions mentioned in sub-paragraph (2) is fulfilled in relation to the premises,
- the sheriff or justice may grant a warrant authorising the Commission (and any person authorised by the Commission for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.
- (2) The conditions are—
- (a) that the exercise of the power in relation to the premises has been refused;
 - (b) that such a refusal may reasonably be expected;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises;
 - (e) that the case is one of urgency;
 - (f) that an attempt to gain entry to the premises without the authority of a warrant would defeat the object of the proposed entry.
- (3) A sheriff or justice must not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) is fulfilled unless the sheriff or justice is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or
 - (b) that the giving of such notice would defeat the object of the proposed entry.
- (4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.

Enforcement notices

- 8 (1) If it appears to the Commission (whether or not following the exercise of powers under paragraph 5)—

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- (a) that—
- (i) a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider and the contravention is likely to recur; or
 - (ii) such a provider is contravening a term or condition of the licence held by the provider and the contravention is likely to continue or to recur or both; and
- (b) that the provider is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence,
- the Commission may serve on the provider a notice (in this paragraph and paragraphs 9, 10 and 12 referred to as an “enforcement notice”) in respect of the contravention.
- (2) An enforcement notice must specify—
- (a) the contravention to which it relates;
 - (b) the Commission’s reasons for believing (as the case may be) that the contravention—
 - (i) has occurred and is likely to recur; or
 - (ii) is occurring and is likely to continue or to recur or both;
 - (c) the date by which the provider is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence;
 - (d) any particular steps which the Commission requires the provider to take for that purpose; and
 - (e) the date on which the notice is to take effect.
- (3) An enforcement notice may specify different dates by which different steps specified under sub-paragraph (2)(d) must be completed.
- (4) The date referred to in sub-paragraph (2)(e) must be no earlier than the day following the last day on which an appeal may be made under sub-paragraph (9).
- (5) In considering whether to serve an enforcement notice, the Commission must consult—
- (a) Scottish Water; and
 - (b) such other persons as the Commission considers appropriate.
- (6) Before serving an enforcement notice on a provider under sub-paragraph (1), the Commission is to—
- (a) serve a copy of the proposed notice on the provider; and
 - (b) specify a period (which is to be not less than 7 days and no more than 28 days from the date of service of the notice) within which the provider may make representations to the Commission about the proposed notice.
- (7) The Commission—
- (a) is to have regard to any representations made by virtue of sub-paragraph (6) (b); and
 - (b) may adjust the notice in light of the representations.
- (8) The Commission must send a copy of an enforcement notice to—
- (a) the Scottish Ministers; and
 - (b) Scottish Water.

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- (9) A provider on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the enforcement notice is of no effect until the appeal is withdrawn or finally determined.
- (10) In an appeal under sub-paragraph (9), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (11) The Commission may—
 - (a) withdraw an enforcement notice; or
 - (b) waive or relax any requirement of an enforcement notice, including substituting a later date for a date specified under sub-paragraph (2)(c) or (3), and may do so whether or not the notice has taken effect.
- (12) The withdrawal of an enforcement notice does not affect the Commission's power to issue a further such notice.

Enforcement notices: offences

- 9 (1) Any water services provider or sewerage services provider, on whom an enforcement notice has been served, who—
 - (a) fails to rectify, or (as the case may be) fails to take steps to prevent the recurrence of, a contravention specified in the notice—
 - (i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or
 - (b) fails to complete a step specified under sub-paragraph (2)(d) of paragraph 8—
 - (i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,is guilty of an offence.
- (2) An offence under sub-paragraph (1) may be charged by reference to any day or longer period of time; and a provider may be convicted of a second or subsequent offence under that sub-paragraph by reference to any period of time following conviction for such an offence.
- (3) A person who is guilty of an offence under sub-paragraph (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.

Revocation of licences

- 10 (1) A water services licence or sewerage services licence may be revoked in accordance with this paragraph.
- (2) If it appears to the Commission that a water services provider or sewerage services provider, on whom an enforcement notice has been served, has—

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- (a) failed to rectify, or (as the case may be) failed to take steps to prevent the recurrence of, a contravention specified in the notice—
 - (i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or
- (b) failed to complete a step specified under sub-paragraph (2)(d) of paragraph 8—
 - (i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,

the Commission may revoke the licence held by the provider by serving on the provider a notice of revocation.

(3) If—

- (a) it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider; and
- (b) the Commission considers that the provider would fail to comply with the terms of an enforcement notice pertaining to that contravention,

the Commission may revoke the licence by serving on the provider a notice of revocation.

(4) If (having special regard to the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7 and to any other matters specified under that subsection) the Commission considers that a water services provider or sewerage services provider no longer has the ability to perform adequately the activities authorised by the licence held by the provider, the Commission may (whether or not the provider has contravened a term or condition of the licence held by the provider) revoke the licence by serving on the provider a notice of revocation.

(5) The Commission may, following a request made to the Commission by a water services provider or a sewerage services provider for the licence held by the provider to be revoked, revoke the licence by serving on the provider a notice of revocation.

(6) The Commission must not revoke a licence under this paragraph unless satisfied that revocation is reasonable having regard to—

- (a) the terms and conditions of the licence;
- (b) the provider's responsibilities to the provider's customers; and
- (c) any other matters the Commission considers to be relevant.

(7) A notice of revocation must specify—

- (a) the reasons why it is served; and
- (b) the date (which must be no earlier than the day after the last day on which an appeal against the notice may be made under sub-paragraph (8)) from which the revocation is to have effect.

(8) A provider on whom a notice of revocation has been served under sub-paragraph (2), (3) or (4) may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the revocation is of no effect until the appeal is withdrawn or finally determined.

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- (9) In an appeal under sub-paragraph (8), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (10) As soon as practicable after a revocation under this paragraph has effect, the Commission must—
- (a) send a copy of the notice of revocation to—
 - (i) Scottish Water; and
 - (ii) the Scottish Ministers; and
 - (b) publish the notice.

Penalties for contravention of licence

- 11 (1) Where it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider, the Commission may impose on the provider a financial penalty of such amount as it considers reasonable in the circumstances of the case.
- (2) The Commission—
- (a) is to prepare a statement of policy with respect to the imposition of penalties under sub-paragraph (1) and the determination of their amount;
 - (b) is to keep the statement under review and may revise the statement;
 - (c) in preparing the statement (and any revised statement), is to consult such persons as it considers appropriate; and
 - (d) is to publish the statement (and any revised statement) in such manner as it considers appropriate.
- (3) Before imposing a penalty under sub-paragraph (1), the Commission is to serve on the provider a notice of its intention to impose the penalty; and the notice must specify the date by which the provider may make representations to the Commission with respect to the penalty.
- (4) In imposing a penalty under sub-paragraph (1), the Commission is to have regard to—
- (a) the statement of policy under sub-paragraph (2) as published at the time of the contravention to which the penalty relates; and
 - (b) any representations made by virtue of sub-paragraph (3).
- (5) A provider on whom a penalty is imposed under sub-paragraph (1) may, by summary application made within 14 days of the date on which the penalty was imposed, appeal to the sheriff against the imposition of the penalty or the amount of the penalty; and the penalty is not recoverable until the appeal is withdrawn or finally determined.
- (6) In an appeal under sub-paragraph (5), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (7) Any penalty imposed under sub-paragraph (1) is recoverable, from the person on whom it was imposed, by the Commission—
- (a) by civil diligence; and
 - (b) whether or not that person continues to hold the licence in relation to which the penalty was imposed.
- (8) Any sums received by the Commission by virtue of this paragraph must be paid into the Scottish Consolidated Fund.

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Register of licences

- 12 (1) The Commission must keep a register of water services licences and sewerage services licences in such manner as the Scottish Ministers may by order prescribe.
- (2) The register must—
- (a) record the particulars of each water services provider and sewerage services provider;
 - (b) record the terms and conditions of each water services licence and sewerage services licence;
 - (c) record, in relation to any enforcement notice—
 - (i) the particulars of the provider on whom the notice was served;
 - (ii) the date of service of the notice;
 - (iii) the matters specified under sub-paragraph (2) of paragraph 8;
 - (iv) any date specified under sub-paragraph (3) of that paragraph; and
 - (v) anything done under sub-paragraph (11) of that paragraph;
 - (d) record, in relation to any notice of revocation served under paragraph 10—
 - (i) the particulars of the provider on whom the notice was served;
 - (ii) the date of service of the notice;
 - (iii) the reasons why it was served; and
 - (iv) the date specified under sub-paragraph (7)(b) of that paragraph;
 - (e) record, in relation to any penalty imposed under paragraph 11—
 - (i) the particulars of the provider on whom it was imposed;
 - (ii) the amount; and
 - (iii) the date on which it was imposed;
 - (f) record the outcome of any appeal provided for in this schedule; and
 - (g) contain such other information as the Scottish Ministers may by order prescribe.
- (3) The register must be available for inspection by any person at any reasonable time.

SCHEDULE 3

(introduced by section 21(6))

CERTAIN PRE-EXISTING AGREEMENTS AS TO CHARGES

- 1 (1) In this schedule, a “relevant agreement” is an agreement—
- (a) between Scottish Water and another person (a “relevant customer”) in respect of eligible premises (within the meaning of Part 2)—
 - (i) by virtue of any of the provisions referred to in sub-paragraph (3) or otherwise; and
 - (ii) which makes provision as to the charges to be paid (other than under a charges scheme) by the relevant customer for services provided by Scottish Water in the exercise of its core functions; and
 - (b) extant on the coming into force of this schedule.
- (2) For the purposes of sub-paragraph (1)—
- (a) an agreement between Scottish Water and another person includes an agreement with the other person to which Scottish Water has become party

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- in consequence of a transfer, by virtue of any enactment or contractual arrangements, of obligations to Scottish Water; and
- (b) an agreement which makes provision as to the charges to be paid for services provided by Scottish Water does not include an agreement by virtue of which there is an obligation to which section 47 of the 1980 Act applies.
- (3) For the purposes of sub-paragraph (1)(a)(i), the provisions are—
- (a) sections 29(2)(b) and (4) and 31(6) of the 2002 Act” (as they had effect immediately before their repeal by this Act);
- (b) section 29(3)(j) of the 1968 Act (as it had effect immediately before its repeal by this Act).
- 2 (1) Scottish Water must, within one month of the coming into force of this schedule, send to the Commission written details of every relevant agreement.
- (2) The Commission must, following receipt of those details, in each case—
- (a) assess the charges payable under the relevant agreement (the “relevant charges”) during any period to which a charges scheme applies; and
- (b) having regard to—
- (i) any costs which reasonably require to be met from the charges fixed in accordance with sub-paragraph (6)(b); and
- (ii) such other matters as the Commission considers appropriate, determine, for the purposes of sub-paragraph (6)(a), an amount less than the relevant charges.
- (3) The Commission must, in each case—
- (a) give the relevant customer written notice of the assessment and determination under sub-paragraph (2); and
- (b) send a copy of the notice to—
- (i) Scottish Water; and
- (ii) every water services and sewerage services provider,
- by such date as the Scottish Ministers may direct.
- (4) The Commission must publish details of every determination under sub-paragraph (2)(b).
- (5) This sub-paragraph applies in any case where a water or sewerage services provider makes arrangements for the provision of any services to which relevant charges apply and is accordingly entitled to demand and recover charges from a relevant customer for that provision.
- (6) Where sub-paragraph (5) applies—
- (a) Scottish Water may, in relation to that provision, demand and recover from the provider charges which must not exceed the amount determined under sub-paragraph (2)(b); and
- (b) the charges which the provider may, in relation to that provision, demand and recover from the relevant customer concerned must not exceed the amount of the relevant charges.
- (7) Any financial disadvantage to Scottish Water arising as a consequence of differences between—
- (a) the amounts determined under sub-paragraph (2)(b); and

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- (b) the charges which would be recoverable by Scottish Water under a charges scheme in relation to the services to which the determinations apply, is to be borne by Scottish Water.
- (8) Scottish Water is—
- (a) in any case where sub-paragraph (5) does not for the time being apply; or
- (b) in any case where that sub-paragraph ceases to apply,
- to demand and recover relevant charges from the relevant customer for services provided by it to the customer.
- 3 (1) A charges scheme does not apply in relation to any services to which relevant charges apply except where the relevant agreement concerned expires or is terminated.
- (2) For the purposes of sub-paragraph (1), the making of arrangements by a water services or sewerage services provider for the provision of any services to which relevant charges apply does not of itself cause the relevant agreement concerned to expire or terminate.
- (3) A relevant agreement may not be renewed on its expiry or termination, nor may its term be extended at any time.

SCHEDULE 4

(introduced by section 30(4))

POWERS OF ENTRY UNDER THE COAL INDUSTRY ACT 1994

After Schedule 1B to the Coal Industry Act 1994 (c. 21) there is inserted—

“SCHEDULE 1C

SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY: SCOTLAND

Exercise of powers of entry etc.

- 1 (1) A person entitled to enter premises by virtue of the power mentioned in section 4E(3)(a) of this Act—
- (a) may take on to the premises such other persons (including, if the person reasonably believes he is likely to be obstructed, a constable) and such equipment or materials as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and
- (b) must, if required to do so, produce written evidence of that entitlement.
- (2) A person who enters premises in the exercise of a power conferred by virtue of section 4E of this Act must leave the premises as effectually secured against trespassers as the person found them.
- (3) Where a person exercises a power conferred by virtue of section 4E(3)(a) or (4) of this Act, the Authority is to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise of that power; or

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- (b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2) above,
except in so far as the loss or damage is attributable to the fault of the person who sustained it.
- (4) Any dispute as to a person's entitlement to compensation under sub-paragraph (3) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbiter, appointed—
 - (a) by agreement between the Authority and the person who claims to have sustained the loss or damage; or
 - (b) in default of agreement, by the Scottish Ministers.
- (5) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of a power conferred by virtue of section 4E of this Act is guilty of an offence.
- (6) A person who is guilty of an offence under sub-paragraph (5) above is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (7) In this schedule, “premises” has the meaning given by section 4E(8) of this Act.

Warrants

- 2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in section 4E(3) or (4) of this Act; and
 - (b) at least one of the conditions mentioned in sub-paragraph (2) below is fulfilled in relation to the premises,
- the sheriff or justice may grant a warrant authorising the Authority (and any person authorised by the Authority for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.
- (2) The conditions are—
- (a) that the exercise of the power in relation to the premises has been refused;
 - (b) that such a refusal may reasonably be expected;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises and the case is one of urgency.
- (3) In a case where subsections (5) and (6) of section 4E of this Act apply, a sheriff or justice shall not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) above is fulfilled unless the sheriff or justice is also satisfied that notice required by subsection (5) (a) of that section has been given and that the period of that notice has expired.
- (4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.”

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SCHEDULE 5

(introduced by section 32)

AMENDMENTS TO ENACTMENTS

Sewerage (Scotland) Act 1968 (c. 47)

- 1 In section 29 (which makes provision relating to consent to discharge of trade effluent) of the 1968 Act, paragraph (j) of subsection (3) is repealed.

House of Commons Disqualification Act 1975 (c. 24)

- 2 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (disqualifying offices), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Race Relations Act 1976 (c. 74)

- 3 In the Race Relations Act 1976, in Part II of Schedule 1A (bodies and other persons subject to general statutory duty), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Water (Fluoridation) Act 1985 (c. 63)

- 4 In the Water (Fluoridation) Act 1985, in subsections (2)(b)(i) and (3) of section 4 (publicity and consultation), for the word “Commissioner” in each place where it occurs there is substituted “Commission”.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

- 5 In the Public Finance and Accountability (Scotland) Act 2000, in subsection (7) of section 23 (economy, efficiency and effectiveness examinations), for the word “Commissioner” there is substituted “Commission”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 6 In the Ethical Standards in Public Life etc. (Scotland) Act 2000—
- (a) in section 19 (action on finding of contravention)—
 - (i) in subsection (4), the words from “and” in the second place where it occurs to the end are repealed; and
 - (ii) in subsection (5), paragraph (c) and the word “; or” immediately preceding it are repealed;
 - (b) sections 25 and 26 (which make special provision for the Water Industry Commissioner for Scotland) are repealed;
 - (c) in section 30 (modification of enactments etc.), the words “or the Water Industry Commissioner for Scotland” are repealed;
 - (d) in schedule 1 (the Standards Commission for Scotland), in paragraph 3, the words “or the Water Industry Commissioner for Scotland” are repealed; and
 - (e) in schedule 3 (devolved public bodies), after the entry relating to the State Hospitals Board for Scotland, there is inserted—

“The Water Industry Commission for Scotland”.

Water Industry (Scotland) Act 2002 (asp 3)

- 7 (1) In each of the following provisions of the 2002 Act”, for the words “Commissioner” and “Commissioner's” wherever occurring there is substituted “Commission” and “Commission's” respectively—
- section 3;
 - section 4(1);
 - section 5(1) to (3);
 - section 6;
 - section 11(1)(a);
 - section 26(1) to (4) and (7);
 - section 27;
 - section 57(6)(a); and
 - in schedule 1, paragraphs 6(4), 7 and 8.
- (2) In section 3 (functions of the Commissioner) of that Act, in subsection (6)—
- (a) in paragraph (a), for the words “its customers” there is substituted “persons whose premises are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both”; and
 - (b) in paragraph (b), for the words “it conducts its relations with its customers or potential or former customers” there is substituted “Scottish Water conducts its relations with those persons or persons whose premises have been, or might reasonably become, connected to either or both of those systems”.
- (3) In section 5 (annual reports by, and information from, the Commissioner), in subsection (2)—
- (a) in paragraph (a), for the words “to such representations, reports and recommendations as are mentioned in section 2(5)” there is substituted “to—
 - (i) any representations made to it by a Customer Panel, and
 - (ii) any recommendations made to it under section 2(4)”; and
 - (b) in paragraph (b), the word “, report” is repealed.
- (4) In section 26 (customer standards codes) of that Act—
- (a) in subsection (1)—
 - (i) in paragraph (a), for the words “its customers” there is substituted “persons whose premises are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both”; and
 - (ii) in paragraph (b), for the words “its customers or potential or former customers” there is substituted “those persons or persons whose premises have been, or might reasonably become, connected to either or both of those systems”; and
 - (b) subsection (2) is repealed.
- (5) Section 40 (reduced charges) of that Act is repealed.
- (6) In section 49 (interests of customers) of that Act, for the words “who is a customer or potential customer of Scottish Water” there is substituted “whose premises are connected to, or might reasonably become connected to, the public water supply

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system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both;”.

- (7) In section 57 (information and reports) of that Act, in subsection (7)—
- (a) the words from “any” to the end become paragraph (a); and
 - (b) after that paragraph there is inserted “, and
 - (b) the extent to which Scottish Water has, during that period, complied with any requirements made under section 13(2) or 15(1) or (5) of the Water Services etc. (Scotland) Act 2005 (asp 3).”.
- (8) In section 68 (orders and regulations) of that Act—
- (a) in subsection (4) after the words “41(5)” there is inserted “, 56B”; and
 - (b) in subsection (6), after the words “41(5)” there is inserted “or 56B”.
- (9) In section 70 (interpretation) of that Act, in subsection (1)—
- (a) in the definition of “charges scheme”, for the words “31(1)” there is substituted “29A(1)”; and
 - (b) for the definition of “the Commissioner” there is substituted—

““the Commission” means the Water Industry Commission for Scotland established under section 1(1) of this Act.”.
- (10) Part 1 (the Commissioner) of schedule 1 to that Act is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 8 In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities)—
- (a) after paragraph 21A there is inserted—

“21B The Convener of the Water Customer Consultation Panels (appointed under paragraph 5(1) of schedule 1 to the Water Industry (Scotland) Act 2002 (asp 3)) and those Panels.”; and
 - (b) in paragraph 55, for the word “Commissioner” there is substituted “Commission”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 9 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) after paragraph 62A there is inserted—

“62B The Convener of the Water Customer Consultation Panels (appointed under paragraph 5(1) of schedule 1 to the Water Industry (Scotland) Act 2002 (asp 3)) and those Panels.”; and
 - (b) in paragraph 106, for the word “Commissioner” there is substituted “Commission”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 10 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—

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- (a) the entry relating to the Water Industry Commissioner for Scotland is repealed; and
- (b) after the entry relating to the Scottish Tourist Board there is inserted—
 “Water Industry Commission for Scotland”.